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	Art Unit	3721	
	Examiner Name	L. Tran	
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Firm or Individual name	Adan Ayala, Esq.
Signature	
Date	June 25, 2004

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UTILITY PATENT

B&D No. TN-2547

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: **Craig A. SCHELL et al.**

Serial No.: 10/057,476

Examiner: **L. Tran**

Filed: **January 24, 2002**

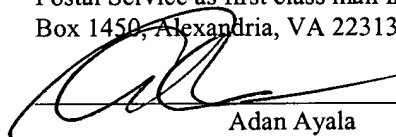
Group Art Unit: **3721**

For: **FASTENER TOOL**

Assistant Commissioner for Patents
Washington, DC 20231

REPLY BRIEF

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 25, 2004


Adan Ayala

Dear Sir:

This is in response to the Examiner's Answer mailed April 29, 2004, for the above-identified application. The present reply brief is being timely filed, as required under 37 CFR § 1.193(b)(1).

The Examiner raises several arguments to support the contention that Foster is analogous art, even though it relates to "manually operated pump dispensers." Foster, col. 1, lns. 4-5.

The Examiner first argues that *In re Oetiker* is factually distinguishable from the present facts and thus inapposite to the present case. In particular, the Examiner argues that the case is distinguishable because the "purpose and application of hooks applied to hose clamps and hooks

applied to garments are vastly different in nature and operational intent.” Applicants/Appellant disagree.

Because the Examiner is attempting to distinguish the facts of the *Oetiker* case, Applicants/Appellant have attached copies of US Patent Nos. 5,274,886 (showing the Oetiker invention; hereinafter “the Oetiker Hook Invention”) and 3,426,400 (showing the garment hook; hereinafter “the Prior Art Hook”).

As discussed by the *Oetiker* court, the Oetiker Hook Invention differs from the prior hose clamps “in the presence of a feature that is described as a preassembly ‘hook.’” *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In particular, hook 40 enters a hole 25 and engages a bar 22a. Oetiker Hook Invention, col. 3, line 52 to col. 4, line 9.

In the *Oetiker* case, the Examiner cited as prior art Oetiker’s earlier granted patent for a hook-less hose clamp, combined with the Prior Art Hook. *Oetiker*, 24 USPQ2d at 1445. The Prior Art Hook shows a hook 30 entering a hole in and engaging a bar 16 of eyelet 13. Prior Art Hook, col. 3, lines 19-24 & 48-54, and col. 4, lines 12-19. In particular, the hook 30 and eyelet 13 are provided on a garment for fastening together two parts of the garment.

The Examiner alleges that *Oetiker* is inapplicable because “the purpose and application of hooks applied to hose clamps and hooks applied to garments are vastly different in nature and operational intent,” whereas “a trigger from a fastener tool and a trigger from a pump dispenser are unequivocally analogous in purpose and application” in the present case.

As discussed above, both the Oetiker Hook Invention and the Prior Art Hook have hooks that are relatively similar in structure and nature. *See, e.g.*, hook 40 in FIG. 6 of Oetiker Hook Invention and hook 30’ in FIG. 3 of the Prior Art Hook. Furthermore, both the Oetiker Hook Invention and the Prior Art Hook share the same operational intent, purpose and application: to

hook one piece of a unit to a second piece of the same unit, keeping both pieces together at least for a period of time. Accordingly, the Examiner's proposed grounds for distinguishing *Oetiker*, i.e., the "vast" difference in nature and operational intent, are incorrect.

The facts of the present case are relatively similar. Thus, *Oetiker* is quite applicable to the present case. In that case, the Examiner basically argued that it was well known to use a hook and eyelet to fasten two parts of one garment. Thus a person faced with the problem of fastening two parts of the same hose clamp would provide the well known hook-and-eyelet on the clamp. *Oetiker*, 24 USPQ2d at 1445. The Examiner in the present case poses a similar ground for rejection: that a person faced with the problem of preventing unintended triggering for a nailer would provide the trigger lock from a pump dispenser on the nailer.

The Federal Circuit held that, even though the Prior Art Hook was well known, it was not analogous to the hose clamp field because it had not been "shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments." *Oetiker*, 24 USPQ2d at 1446.

In the present case, the Examiner has provided no evidence that a person of ordinary skill, seeking to solve a problem of preventing unintended triggering of the fastener tool by an adult, would reasonably be expected or motivated to look for a solution in the child-proof pump dispenser field. Even though Applicants/Appellant have specifically requested such evidence in a prior response to an Office Action, the only "evidence" presented by the Examiner are his unsupported statements.

For example, in the Final Office Action, the Examiner just said "Foster et al. is certainly reasonably pertinent to the problem of specific trigger lock designs." No further evidence was provided showing that a person skilled in the nailer art would review Foster. In the Examiner's

UTILITY PATENT

B&D No. TN-2547

Answer, the Examiner relies on “common sense,” as opposed to evidence, to state that one “of ordinary skill solving a problem related to trigger locks would be expected to turn to other classifications, such as dispensing to prevent the unwanted dispensing of a product out of common sense.”

Because the Examiner has failed to provide any substantiating evidence that a person skilled in the art would look beyond the nailer field and into the child-proof pump dispenser field for a solution, Foster cannot be considered analogous prior art. Thus, the Examiner cannot rely on Foster for the obviousness rejection.

The Examiner further argues that Foster is relevant because it relates to the same problem the claimed invention seeks to address, and thus it is “in the same field of endeavor.” To do so, the Examiner sets out a series of premises to conclude that Foster is analogous prior art. As the Board may know, in the field of logic, a line of reasoning (or logic syllogism) can be proved invalid if the objects of the premises are substituted and the reasoned conclusion contradicts reality.

In the present case, if the objects of such premises are substituted with the facts of *Oetiker*, the Examiner’s line of reasoning will lead to a conclusion that contradicts the Federal Circuit’s holding in that case. Thus, the Examiner’s conclusion, that Foster is analogous art, is invalid.

The Examiner argues that “a trigger from a fastener tool and a trigger from a pump dispenser are unequivocally analogous in purpose and application [because i]n both applications, the trigger lock is meant to prevent the actuation of a trigger.” Under such rationale, the *Oetiker* Hook Invention and the Prior Art Hook are analogous in purpose and application because in both

applications the hook is meant to latch two pieces of the same product and to prevent the separation thereof.

The Examiner continues: “trigger locks of dispensers share the same solution to the same problem of preventing triggering and release of unwanted product[, thus t]rigger locks in dispensing applications are reasonably pertinent to fastener dispensing applications and have identical operational intent.” Similarly, the Oetiker Hook Invention and the Prior Art Hook share the same solution (a hook engaging a hole) to the same problem of fastening two parts of the same unit. Under the Examiner’s standard, the hooks in garment applications are reasonably pertinent to hose clamp applications and have identical operational intent, i.e., to fasten the two parts of the same unit.

The Examiner also writes that “[o]ne of ordinary skill solving a problem related to trigger locks would be expected to turn to other classifications, such as dispensing, to prevent the unwanted dispensing of a product out of common sense.” Similarly, one of ordinary skill solving a problem related to latching a hose clamp would be expected to turn to other classifications, such as well-known hooks, to prevent the unwanted unlatching of the hose clamp.

Under the Examiner’s line of reasoning, when combined the *Oetiker* facts, a person skilled in the art would consider the Prior Art Hook within the same field of endeavor and thus analogous. Such conclusion however contradicts the legal reality established by the Federal Circuit. Under logic rules, the Examiner’s line of reasoning and conclusion are invalid.

To conclude, the legal reasoning and conclusion of *Oetiker* are applicable to the present case. Under such precedent, Foster is not analogous art and cannot be used to invalidate Claim 3.

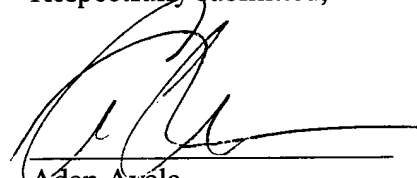
UTILITY PATENT

B&D No. TN-2547

Based on the foregoing, Applicants/appellant urges the Board to reverse the Examiner's final rejection of Claim 3 under 35 USC § 103(a). Furthermore, the Board should order the allowance of Claim 3.

No fee is believed due. Nonetheless, the Commissioner is authorized to charge payment of any fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adan Ayala', written over a horizontal line.

Adan Ayala

PTO Reg. No. 38,373

Attorney for Applicant/appellant